

REMARKS

Status of the Claims

Claims 1-4 and 10-11 are amended.

Following amendment herein, Claims 1-6 and 9-15 remain pending.

No amendment introduces new matter into this application.

In Claim 1, support for wherein the at least one polyolefin, in addition to the at least one grafted copolymer, constitutes the polymeric binder of the floor covering is found in the specification at least at page 3, 2nd paragraph, lines 6-9.

Claim 4, which depended from independent Claim 1, is re-written in independent form.

Claims 11 finds support in the specification as originally filed. More specifically, support for polymeric binder is found at least at page 3, 2nd paragraph, line 7.

The Rejections Under 35 U.S.C. § 112

Claims 1-6 and 9-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

According to the Patent and Trademark Office (“PTO”),

Instant claim 1 as written, recite[s] a “elastomer as a polymeric binder based on at least one polyolefin”. The language is unclear because “based on” could mean mixed, blended, or describe the entire polymer as one compound (see instant specification page 2, 3rd and 4th paragraphs). It is not clear if the elastomer is mixed with a polyolefin or added on the elastomer chain and the specification provides no direction on the production of the elastomer used.

Office Action page 2, lines 10-14; Emphasis added.

Respectfully, Applicants’ disagree with the PTO’s interpretation of the meaning of “based on”. However, in order to advance prosecution, Claim 1 is amended herein to enhance clarity by deletion of the recitation elastomer as a polymeric binder based on. Accordingly, Applicants’ request that this rejection be withdrawn.

The Rejections Under 35 U.S.C. § 102(e)

Claims 1-4, 6 and 11-13 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,254,956 to *Kjellqvist et al.* (“*Kjellqvist*”).

In the present Office Action, in response to arguments filed by Applicants on 09-11-06 (*i.e.*, in response to the amendment filed by Applicants in reply to the previous Office Action dated March 7, 2006), the PTO states,

Applicant has not limited the claims to a constituent as argued. The terms are broadly interpreted, and as written, “based on” is not enough to limit the claims to the structure argued.

Present Office Action, page 6, lines 3-10. Further, the PTO repeats verbatim its previous (*i.e.*, pages 2-3 of the previous Office Action dated March 7, 2006) reasons for asserting that Claims 1-4, 6 and 11-13 are anticipated by *Kjellqvist*. Present Office Action, page 3 to page 4, 1st paragraph.

Respectfully, Applicants disagree with the PTO’s interpretation of the meaning of “based on”. Further, for at least the reasons of record, Applicants maintain that *Kjellqvist* does not anticipate the claimed invention. However, in order to advance prosecution, Claim 1 is amended herein to delete the recitation of elastomer as a polymeric binder based on.

This rejection is moot in view of the present amendment, therefore, Applicants respectfully request that the rejection of Claims 1-4, 6, and 11-13 under 35 U.S.C. § 102(e) as being anticipated by *Kjellqvist*, be withdrawn, and these claims be allowed.

The Rejection Under 35 U.S.C. § 103(a) over U.S. Patent No. 6,254,956 to *Kjellqvist et al.*

Claims 5 and 9-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,254,956 to *Kjellqvist et al.* (“*Kjellqvist*”).

In the present Office Action, in response to arguments filed by Applicants on 09-11-06 (*i.e.*, in response to the amendment filed by Applicants in reply to the previous Office Action dated March 7, 2006), the PTO states,

Applicant has not limited the claims to a constituent as argued. The terms are broadly interpreted, and as written, “based on” is not enough to limit the claims to the structure argued.

Present Office Action, page 6, lines 3-10. Further, the PTO repeats verbatim its previous (*i.e.*, pages 4-5 of the previous Office Action dated March 7, 2006) reasons for asserting that Claims 5 and 9-10 are obvious over *Kjellqvist et al.* in view of *Scarlette*. Present Office Action, page 4 lines 1-16.

Respectfully, Applicants disagree with the PTO's interpretation of the meaning of "based on". Further, for at least the reasons of record, Applicants maintain that the claimed invention is not obvious over *Kjellqvist*. However, in order to advance prosecution, Claim 1 is amended herein to delete the recitation of elastomer as a polymeric binder based on. Therefore, this rejection is moot in view of the present amendment.

Applicants maintain that *Kjellqvist's* interpolymers require co-polymerizing one or more α -olefin monomers with *one or more vinylidene aromatic monomers and/or one or more hindered aliphatic or cycloaliphatic vinylidene monomers* (see, *e.g.*, col. 2. lines 25-30). Further, Applicants maintain that *Kjellqvist* offers no suggestion, and provides no motivation, to completely eliminate one of the required constituent olefin monomers.

In contrast, the polyolefin of Claims 5 and 9-10 is absent a constituent olefin monomer corresponding to *Kjellqvist's* mandatory "*vinylidene aromatic monomers*" (col. 3. lines 6-38), and/or "*hindered aliphatic or cycloaliphatic vinylidene monomers*" (col. 3, line 38-col. 4, line 5), neither of which is encompassed in the polyolefin of Claims 5 and 9-10.

Accordingly, *Kjellqvist* does not teach or suggest every element of the claimed invention. Respectfully, Applicants request that the rejection of Claims 5 and 9-10 under 35 U.S.C. § 103(a) in view of *Kjellqvist* be withdrawn, and these claims allowed.

The Rejection Under 35 U.S.C. § 103(a) over U.S. Patent No. 6,254,956 to *Kjellqvist et al.* in view of U.S. Patent No. 6,399,689 to *Scarlette*.

Claims 14-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,254,956 to *Kjellqvist et al.* ("*Kjellqvist*") as applied to claim 1 above, and further in view of U.S. Patent No. 6,399,689 to *Scarlette* ("*Scarlette*").

In the present Office Action, in response to arguments filed by Applicants on 09-11-06 (*i.e.*, in response to the amendment filed by Applicants in reply to the previous Office Action dated March 7, 2006), the PTO states,

Applicant has not limited the claims to a constituent as argued. The terms are broadly interpreted, and as written, “based on” is not enough to limit the claims to the structure argued.

Present Office Action, page 6, lines 3-10. Further, the PTO repeats verbatim its previous (*i.e.*, pages 4-5 of the previous Office Action dated March 7, 2006) reasons for asserting that Claims 14-15 are obvious over *Kjellqvist et al.* in view of *Scarlette*. Present Office Action, page 5 to page 6 lines 1-2.

Respectfully, Applicants disagree with the PTO’s interpretation of the meaning of “based on”. Further, for at least the reasons of record, Applicants maintain that the claimed invention is not obvious over *Kjellqvist* in view of *Scarlette*. However, in order to advance prosecution, Claim 1 is amended herein to delete the recitation of elastomer as a polymeric binder based on. Therefore, this rejection is moot in view of the present amendment.

Applicants maintain that *Kjellqvist*’s interpolymers require co-polymerizing one or more α -olefin monomers with *one or more vinylidene aromatic monomers and/or one or more hindered aliphatic or cycloaliphatic vinylidene monomers* (see, *e.g.*, col. 2, lines 25-30). Further, Applicants maintain that neither *Kjellqvist* nor *Scarlette*, either alone or in combination, offer any suggestion, and provide no motivation, to completely eliminate one of the required constituent olefin monomers.

In contrast, the polyolefin of Claims 14-15 is absent a constituent olefin monomer corresponding to *Kjellqvist*’s mandatory “*vinylidene aromatic monomers*” (col. 3, lines 6-38), and/or “*hindered aliphatic or cycloaliphatic vinylidene monomers*” (col. 3, line 38-col. 4, line 5), neither of which is encompassed in the polyolefin of Claims 14-15.

Accordingly, *Kjellqvist* and *Scarlette*, either alone or in combination, do not teach or suggest every element of the claimed invention. Respectfully, Applicants request that the rejection of Claims 14-15 under 35 U.S.C. § 103(a) over the combination of *Kjellqvist* and *Scarlette*, be withdrawn, and these claims be allowed.

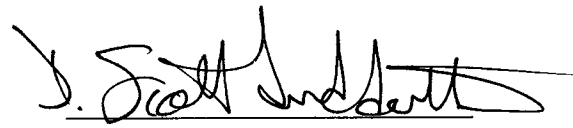
CONCLUSION

In view of the above amendments and remarks, Applicants respectfully assert that the rejection of the claims as set forth in the Office Action has been addressed and overcome. Applicants further assert that all Claims are in condition for allowance and requests that an early notice of allowance be issued. If the Examiner believes any informalities remain in the application that can be resolved by telephone interview, a telephone call to the undersigned attorney is requested.

No additional fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required, or credit any overpayment, to Deposit Account Number 09-0528.

Respectfully submitted,

2/28/07
Date


D. Scott Sudderth
Registration No. 34,026

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P. O. Box 7037
Atlanta, Georgia 30357-0037
(404) 872-7000 (Firm)
(404) 962-7527 (Direct Telephone)
(404) 870-8177 (Facsimile)

Attorney Docket No.: D078 1090 (41461.0010.0)